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Attn: IGT
P.O. Box 70250
Oakland, CA 94612-0250

EXAMINER

SAGER, MARK ALAN

ART UNIT	PAPER NUMBER
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3714

NOTIFICATION DATE	DELIVERY MODE
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ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/785,526	Applicant(s) ROWE, RICHARD E.	
	Examiner M. Sager	Art Unit 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/10/09.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/10/09</u> . | 6) <input type="checkbox"/> Other: _____ |

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Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/110/09 has been entered.

Information Disclosure Statement

2. The information disclosure statement filed 11/10/09 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because reference data with regards to PG-Pub 2002/0142845 does not match PTO records since that reference is to Randall et al. It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a). Regarding other references lined through, the references were previously considered as indicated on 1449s of record; while the other documents listed as elements 21 and 273 pertain to allowed claims of inventor related patents previously of record as having been considered and thus are redundant entries.

Claim Interpretation

3. While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than

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function. In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997) (The absence of a disclosure in a prior art reference relating to function did not defeat the Board's finding of anticipation of claimed apparatus because the limitations at issue were found to be inherent in the prior art reference); see also In re Swinehart, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971); In re Danly, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device is, not what a device does." Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original). MPEP 2114. In this case, the function is performed by prior art system.

4. Also, claim scope is not limited by claim language that suggests or makes optional but does not require steps to be performed, or by claim language that does not limit a claim to a particular structure. However, examples of claim language, although not exhaustive, that may raise a question as to the limiting effect of the language in a claim are: (A) "adapted to" or "adapted for" clauses; (B) "wherein" clauses; and (C) "whereby" clauses. The determination of whether each of these clauses is a limitation in a claim depends on the specific facts of the case. In Hoffer v. Microsoft Corp., 405 F.3d 1326, 1329, 74 USPQ2d 1481, 1483 (Fed. Cir. 2005), the court held that when a "whereby" clause states a condition that is material to patentability, it cannot be ignored in order to change the substance of the invention." Id. However, the court noted (quoting Minton v. Nat'l Ass'n of Securities Dealers, Inc., 336 F.3d 1373, 1381, 67 USPQ2d 1614, 1620 (Fed. Cir. 2003)) that a "whereby clause in a method claim is not given weight when it simply expresses the intended result of a process step positively recited." Id. MPEP 2111.04. In this case, the 'wherein' clauses are end result or environment of use that fail to patentably distinguish such that the clauses do not state a condition that is material to

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patentability. Also, the aforementioned 'wherein' clauses fail to further structurally define the claimed machine as a repository (i.e. server/database) and gaming system, since the clauses appear to relate to function that fails to define a condition that is material to patentability.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 23-26 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The original specification as filed fails to reasonably convey to an artisan that inventor possessed the claimed invention regarding denomination in manner claimed since the only reference with respect to denomination is discussed in paragraph 84 of pg pub 2004/0180721 as the term is conventionally defined in the art as monetary unit but disclosure fails to reasonably convey to an artisan that the inventor had possession of invention regarding download a payable having an increased/decreased denomination during peak/off-peak a time as claimed. The alleged support cited of paragraphs 52 and 57 pertain to downloading a payable that changes prize (jackpot) or odds, but there is no evidence that disclosure as would be interpreted by an artisan that inventor possessed the invention regarding downloading a payable that alters denomination for peak and off-peak hours. Thus, the function as claimed is new matter.

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7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 23-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The invention as claimed fails to define metes and bounds of invention so as to define its scope to those interested in public in exchange for right to exclude regarding to download a pay table having a reduced/increased denomination during a playing time as claimed.

Claim Objections

9. Claim 15 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claimed download pay tables to the plurality of gaming terminals does not further limit download different paytables to different gaming terminals at specific times of day of claim 1.

Claim Rejections - 35 USC § 103

10. Claims 1, 3, 5-9, 12-17 and 20-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Assignee disclosed prior art in view of Acres (5655961) or Joshi (6939226). A statement by an applicant in the specification or made during prosecution identifying the work of another as “prior art” is an admission which can be relied upon for both anticipation and obviousness determinations, regardless of whether the admitted prior art would otherwise qualify as prior art under the statutory categories of 35 U.S.C. 102. *Riverwood Int'l Corp. v. R.A. Jones & Co.*, 324 F.3d 1346, 1354, 66 USPQ2d 1331, 1337 (Fed. Cir. 2003); *Constant v. Advanced*

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Micro-Devices Inc., 848 F.2d 1560, 1570, 7 USPQ2d 1057, 1063 (Fed. Cir. 1988). Response to Applicant arguments is provided below and incorporated herein. As maintained from prior action, the instant application presents admitted prior art as a server and system known or used by others that includes a network interface for communicating with gaming terminals (para 3-12, fig. 1), a memory to store gaming transaction information received from the plurality of gaming terminals (para 3-12, fig. 1, esp. para 5 for player tracking, accounting, cashless award ticketing, lottery, progressive games and bonus games) and, game software components for use by the plurality of gaming terminals (para 3-12, fig. 1), game software components for use by the plurality of gaming terminals wherein each of the gaming terminals is used to present a game of chance that is regulated by a gaming jurisdiction in which the gaming terminal is located (para 3-12, fig 1), a processor to download to the gaming terminals game software components that comply with rules of gaming jurisdiction in which the gaming terminals are located (para 3-12, fig. 1, esp. para 2-5 that states in part 'gaming machines may be dynamically configured' where game software components comply with gaming jurisdiction by happenstance to operate lawfully), to download particular game software to a gaming terminal (para 3-13, fig 1, para 2-5 that states in part: gaming machines may be dynamically configured thereby including game software update, adding new feature, correction of bugs or replacement of games), wherein the game software components include game system components (abstract, para 3-12 fig. 1), to identify a user playing a game of chance at a gaming terminal (para 5, player tracking), to group a portion of the plurality of gaming terminals for generating a progressive game on the portion of gaming terminals and downloading software allowing a progressive game to be generated on the plurality of gaming terminals (para 5, 7-8, fig 1; implicit for linked progressive game; as further

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evidence under 2144.03 and 2131.01 of linked progressive game terminals see Torango 5885158 or Kelly 5816918 or Xidos 5851149), to download game software for allowing a promotion [as a bonus] to be generated on the plurality of gaming terminals wherein a portion of the gaming terminals used in the promotion are owned by first gaming entity and wherein a second portion of the gaming terminals used in the promotion are owned by a second gaming entity (para 5-8, fig 1; as further evidence under 2144.03 and 2131.01 of linking terminals for promotion/bonus see Acres 5655961 or Boushy 5761647 or Eggleston 6061660 or Kelly 5816918 or Xidos 5851149), wherein the processor is further designed or configured to display performance data for each of a plurality of different game software configurations used on the gaming terminals (para 8-11, fig. 1), wherein the network interface is for communicating with a plurality of remote servers and the processor is designed and configured to communicate with the remote servers to gather information for storage in the memory regarding the plurality of gaming terminals (para 5, fig 1), to download player tracking software (para 5, 8, fig 1), download pay tables (para 5, 7-8, fig 1 for implementing progressive or bonus; as further evidence under 2144.03 and 2131.01 for updating/modifying pay table for a bonus or progressive game see Torango 5855158 or Kelly 5816918 or Xidos 581149 or Acres 5655961 or Boushy 5761647 or Eggleston 6061660), download a device driver (para 5-8, fig 1, implicit due to gaming terminals including a computer or processor with associated drivers for network interface, display, graphics, sound, etc that require updating to utilize new features or protections/security), allows a bonus game to be generated (para 5, 7-8, fig 1), wherein the software components include game system components, gaming pay tables, bonus, progressives, graphics, sounds, and networking (sic), games of chance include slot machines and video poker (para 3-12, fig 1, supra). The disclosed

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bonus (para 3, 5, 7-8, fig 1) is deemed to relate to incentives, promotions, bonuses and secondary games as in evidence above.

Regarding amended language of claim 1, 22 and 27-30, the instant application presents admitted prior art (*supra*) that further includes based upon the gaming machine being dynamically configured for gaming services being provided via communication network that links to a remote computer to provide gaming services of player tracking, accounting, cashless award ticketing, lottery, progressive games, and bonus games where the gaming services and play options offered on a particular machine varies regularly with time such thereby including game update, adding new feature, correction of bugs or replacement of games to thereby include a change in payable by happenstance due to new content or change in existing pay structure thereby (para 5, 8, 11; as further evidence under MPEP 2131.01 see Assignee reference EP 1004970 @ paragraphs 3-14 to reprogram gaming terminals to accommodate new games, regulatory changes, correct bugs or other programming errors, install new features or the like) where by happenstance that the dynamically configuring is adding a new game or new feature to including bonus or progressive game that downloads a payable thereby. Thus, the admitted prior art discloses same structure performing same function in so far as downloading a new game or feature that includes a payable is performing same function. However, although admitted prior art discloses the genus of downloading a payable, it lacks the temporal and location qualifying language of the species as claimed. In related references previously of record and/or referenced in prior action, Acres (abstract, 2:32-3:45, 6:21-31, 48-57, 7:18-44, 9:40-67, 16:39-20:35, 22:59-26:65, figs 1-34) and Joshi (abstract, 1:56-2:51, 3:52-4:45, 12:16-15:43, figs 1-18B) disclose system teaching to download different paytables to different gaming terminals at

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specific times of day, to download to at least one gaming terminal during a peak game playing time a peak payable having a set of odds for peak game playing times, to download to at least one gaming terminal during an off-peak game playing time an off-peak payable having an increased jackpot amount wherein the increased jackpot amount is not available on the at least one gaming terminal during peak game playing times, to download to at least one gaming terminal during a promotional game playing time a promotional payable corresponding to at least one prize that is available during the promotional game playing time and to download the promotional payable at one or more random times where peak, off-peak and random times are defined/configured by the system as taught by Acres or Joshi. Acres and Joshi is relevant prior art due to being in the field of applicant's endeavor or, is reasonably pertinent to the particular problem with which the applicant was concerned. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir.1992). The level of ordinary skill in the art is as shown by the prior art. In consideration of US Supreme Court decision in KSR, that 'known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art', it would have been obvious to an artisan at a time prior to the invention to apply the process of to download different paytables to different gaming terminals at specific times of day, to download to at least one gaming terminal during a peak game playing time a peak payable having a set of odds for peak game playing times, to download to at least one gaming terminal during an off-peak game playing time an off-peak payable having an increased jackpot amount wherein the increased jackpot amount is not available on the at least one gaming terminal during peak game playing times, to download to at least one gaming terminal during a promotional

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game playing time a promotional payable corresponding to at least one prize that is available during the promotional game playing time and to download the promotional payable at one or more random times as taught by Acres or Joshi to improve the gaming system and repository of admitted prior art for the predictable result of remote reconfigure game terminals to encourage player interest during off-peak hours while increasing revenue during peak play period.

Essentially, the downloading or updating of payable for bonus or promotion to encourage play fails to critically distinguish over the combination of admitted prior art with Acres or Joshi as same structure performing same function for same purpose. Also, Acres was referenced in prior action of instant application regarding to download a payable; while, Joshi was of record herein and applied in recent actions in related applications 10659827 and 11544923 for same function.

Also, although, the disclosed admitted prior art includes to download game software for allowing promotions as a bonus including bonuses over multiple gaming sites that are owned by different entities such as different casinos (supra), it is not clear whether the disclosed admitted prior art server and gaming system includes to download game software for a new game to a gaming terminal when a gaming performance of a current game on the gaming terminal is assessed as poor. However, Assignee admitted prior art @paragraphs 3-14 of EP1004970 (IGT is same assignee herein) states a gaming system to reprogram gaming terminals to accommodate new games, regulatory changes, correct bugs or other programming errors, install new features or the like whereby an artisan would at least interpret correcting bugs or other programming errors relates to gaming performance of a current game being assessed as poor. Thus, Assignee admitted prior art discloses same structure performing same function for same purpose claimed.

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Finally regarding features of claims 23-26 to download a payable during peak or off-peak playing time having increased or reduced denomination, respectively, the Assignee admitted prior art downloads a payable while Acres and Joshi each suggest downloading a different payable at different times (*supra*). Thus, the combination performs same function by same structure for same purpose where the difference is within skill of an artisan as shown next. Where denomination pertains to minimum and/or maximum wager, by Official Notice, the examiner will execute an affidavit upon request attesting as having witnessed during visits to casinos in Atlantic City during 1986-1988 the casino personnel increasing minimum wager (denomination) at gaming tables in casino during peak while reducing the minimum wager during off-peak periods such that during peak periods minimum wager is raised while during off-peak it is lowered. The increasing of minimum wager is to increase revenue earned during the peak playing period while reducing the minimum wager is to encourage player to play during off-peak period. The Office notes casino practice to raise and lower denomination of wager for peak and off-peak playing time is commonplace at least for table games. Linked table play at terminals was known. Thus, the combination discloses performing same function by same structure for same purpose where the difference between prior art and claimed gaming system regards downloading a payable that changes denomination rather than downloading a payable having different jackpot amount/prize or odds. However, in light that it is known for casino to adjust minimum wager based on peak/off-peak play (*supra*), the difference fails to critically distinguish over combination of admitted prior art in view of Acres or Joshi when the practice at casinos to raise/reduce minimum wager during peak/off-peak periods is taken into consideration.

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11. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over disclosure of admitted prior art in view of Acres or Joshi as applied to claim 1 above, and further in view of either O'Conner (6178510) or Paravia (6508710) or Martin (5618232). It is not clear whether the disclosed admitted prior art server and gaming system in view of Acres or Joshi discloses to determine the gaming jurisdiction where a particular gaming terminal is located. Determining a location of a gaming terminal is known as taught by O'Conner, Paravia or Martin so as to comply with local jurisdiction gaming laws. O'Conner, Paravia or Martin is relevant prior art due to being in the field of applicant's endeavor or, is reasonably pertinent to the particular problem with which the applicant was concerned. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir.1992). The level of ordinary skill in the art is as shown by the prior art. Thus, in consideration of US Supreme Court decision in KSR, that 'known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art', it would have been obvious to an artisan at a time to apply the process to determine the gaming jurisdiction where a particular gaming terminal is located as taught by either O'Conner, Paravia or Martin to improve the server and gaming system of the disclosed admitted prior art in view of Acres or Joshi for the predictable result of complying with jurisdiction gaming laws.

12. Claim 4 and 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over admitted prior art in view of Acres or Joshi as applied to claim 1 above, and further in view of Walker (6110041). The disclosed admitted prior art includes to determine the identity of a user at least with respect for player tracking (para 3, 5, 7-8, fig 1) but it is not clear whether the disclosed admitted prior art server and gaming system in view of Acres or Joshi discloses to

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determine a custom software configuration for the user and download the custom configuration for the gaming terminal and to download a paytable with increased/decreased denomination, as claimed. However, in a related reference, Walker discloses a method and system for adapting gaming terminals to user preferences (abstract, 2:13-49, figs 1-11b) so as to determine a custom software configuration for the user and download the custom configuration for the gaming terminal and Walker discloses changing denomination based on player preference or casino preference (fig 5 and 7 see currency and coins played). Where denomination pertains to minimum and/or maximum wager, by Official Notice, the examiner will execute an affidavit upon request attesting as having witnessed during visits to casinos in Atlantic City during 1986-1988 the casino increasing minimum wager (denomination) at gaming tables in casino during peak while reducing the minimum wager during off-peak periods such that during peak periods minimum wager is raised while during off-peak it is lowered. The increasing of minimum wager was to increase revenue earned during the peak playing period while reducing the minimum wager was to encourage player to play during off-peak period. The Office notes casino practice to raise and lower denomination of wager for peak and off-peak playing time is commonplace at least for table games. Walker is relevant prior art due to being in the field of applicant's endeavor or, is reasonably pertinent to the particular problem with which the applicant was concerned. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir.1992). The level of ordinary skill in the art is as shown by the prior art. In consideration of US Supreme Court decision in KSR, that 'known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art', it would have been obvious to an

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artisan at a time prior to the invention to apply the process to determine a custom software configuration for the user and download the custom configuration for the gaming terminal, to download to at least one gaming terminal during an off-peak playing time a payable having a reduced denomination wherein the reduced denomination is smaller than a denomination used by at least one gaming terminal during peak playing time, to download to at least one gaming terminal during a peak playing time a payable having an increased denomination wherein the increased denomination is higher than a denomination used by at least one gaming terminal during off-peak playing time as suggested by Walker and Official Notice regarding table game play to improve the server and system of the disclosed admitted prior art in view of Acres or Joshi for the predictable result of adapting a terminal to user or casino preferences including language, sound, pay table, game, bonuses, etc.

13. Claims 10-11 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over disclosed admitted prior art in view of Acres or Joshi as applied to claim 1 above, and further in view of Alderson (5019963), Fawcett (5845077), Frye (6047129) or Halliwell (5473772).

Although the disclosed admitted prior art server and system includes to store to the memory game software transaction information (para 3, 5, 7-12), it is not clear whether the disclosed admitted prior art server and gaming system in view of Acres or Joshi includes to store to memory current and past gaming software configurations for each of the plurality of gaming terminals (clm 10) and to receive game component information from the gaming terminals wherein the component information describes the game software components on the gaming terminals (clm 19). Regarding claim 10, configuration control of a machine or system is known so as that a user is aware of configuration of the version of components used in its

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manufacture/build for licensing, repair and maintenance. In particular, the configuration of a gaming machine is required to be maintained for compliance with local jurisdiction laws. Thus, either the admitted prior art server and system implicitly includes configuration control such as to store to memory current and past gaming software configurations for each of the plurality of gaming terminals so as to comply with local jurisdiction laws or it would have been obvious to an artisan at a time prior to the invention to apply the process store to memory current and past gaming software configurations for each of the plurality of gaming terminals as known for compliance to improve the server and gaming system of disclosed admitted prior art for the predictable result of maintaining an auditable history of gaming terminal form/structure and software so as to comply with local laws. Further, regarding claim 19, Alderson (abstract), Fawcett (abstract), Frye (abstract) or Halliwell (abstract) disclose software updating via a server based on list of software stored on terminal being communicated from terminal to server to check for which software is out of date and needs to be updated so as to teach/suggest to receive game software component information from the gaming terminals wherein the game software component information describes the game software components store on the gaming terminals. Thus, it would have been obvious to an artisan at a time prior to the invention to apply the process to receive game software component information from the gaming terminals wherein the game software component information describes the game software components store on the gaming terminals as taught/suggested by Alderson, Fawcett, Frye or Halliwell to improve the server and gaming system of disclosed admitted prior art in view of Acres or Joshi for the predictable result of automatically updating out of date software components.

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14. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over disclosed admitted prior art in view of Acres or Joshi as applied to claim 1 above, and further in view of Heath (6006034). Although the disclosed admitted prior art server and system includes updating game software components (para 3, 5, 7-12), it is not clear whether the disclosed admitted prior art server and gaming system in view of Acres or Joshi includes to update game software components on gaming terminals using one or more update triggers. Heath discloses a system and method for automatic version upgrading and maintenance that teaches/suggests to update game software components on gaming terminals using one or more update triggers (abstract, 1:34-3:38, and figs 1A-7C). Heath is relevant prior art due to being in the field of applicant's endeavor or, is reasonably pertinent to the particular problem with which the applicant was concerned. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir.1992). The level of ordinary skill in the art is as shown by the prior art. Thus, it would have been obvious to an artisan at a time prior to the invention to apply the process of to update game software components on gaming terminals using one or more update triggers as taught/suggested by Heath to improve the server and gaming system of disclosed admitted prior art in view of Acres or Joshi for the predictable result of automatically upgrading and maintaining software based on pre-arranged periodic or event driven basis. Acres and Joshi teach update triggers as timing.

Response to Arguments

15. Applicant's arguments with respect to claims 1-30 have been considered but are moot in view of the new ground(s) of rejection.

16. Applicant's arguments filed Nov 10, 2009 have been fully considered but they are not persuasive. In reply to remark on page 8-9 that Assignee disclosed prior art lacks to download

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different paytables to different gaming terminals at specific times of day, the Office disagrees in so far as downloading a new game, new feature by happenstance includes a different payable and where the timing fails to critically distinguish due to admitted prior art gaming system performing same function to download a payable to different gaming terminals for same purpose. However, in the alternative where the genus of admitted prior art lacks the specificity of species claimed, as further evidence, showing the species lacks criticality, Acres and Joshi each teach a gaming system to download different paytables to different gaming terminals at specific times of day to include paytables for peak or off-peak play period for larger bonus or prize, change in odds as percentage payout. Also, in light of considering practice to adjust minimum wager for table play during peak/off-peak periods further demonstrates lack of criticality of specific modification to payable.

Claims 2-30 were alleged as being patentable on page 9 for either claiming similar function to claim 1 or based on dependency to claim having such function, the Office disagrees and incorporates above discussion herein.

Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Stupak, Walker and Hettinger each disclose system to reconfigure payable. Breeding, Franchi, Hedges, McCrea, Sidley and Takashima show linked gaming terminals playing table games.

18. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Sager whose telephone number is 571-272-4454. The examiner can normally be reached on T-F, 0700-1730 hours.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on 571-272-4690. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. Sager/
Primary Examiner, Art Unit 3714